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April 8, 2008

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 10, 2007

Case Number: TSO-0552

This decision concerns the eligibility of XXXXXXXXXXXX ("the Individual") for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should not be restored at this time.

**I. BACKGROUND**

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) local security office (LSO), informing the Individual that information in the possession of the DOE created a substantial doubt pertaining to his eligibility for an access authorization.<sup>1</sup> See Notification Letter, July 2, 2007.

The notification letter indicated a concern regarding the individual's financial responsibility. The letter noted that the Individual filed a Chapter 7 bankruptcy in July 1999 and a Chapter 13 bankruptcy in August 2002.<sup>2</sup> The letter also noted that, although he had reported the 1999 bankruptcy, the Individual had failed to report the Chapter 13 bankruptcy as required by DOE security rules. *Id.* The notification letter also noted that a judgment had been filed against the Individual in May 2001 in the amount of \$659 and another had been filed in October 2004 in the amount for \$1,411, and that the Individual had failed to report those judgments to the LSO in a timely manner. The notification letter further cited statements the Individual had made during a December 2006 personnel security interview (PSI) regarding his financial situation. Specifically, the letter cited the Individual's statements that his 2002 bankruptcy filing was the result of overspending, that he was still not handling his finances in a responsible manner, and that he was not addressing his financial issues even though he was aware that he needed to do so. *Id.*

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<sup>1</sup> Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

<sup>2</sup> The Individual has been employed by a DOE contractor since 1986. DOE Ex. 1.

The notification letter states that these facts give rise to a security concern under 10 C.F.R § 710.8(l) (Criterion L) which, in relevant part, pertains to conduct showing a pattern of financial irresponsibility.

Upon receipt of the notification letter, the Individual requested a hearing in this matter. *See* Individual's Letter, July 19, 2007. At the hearing, the Individual, representing himself, presented his own testimony as well as the testimony of his wife, his supervisor, his co-worker, and his church friend. The DOE Counsel presented the testimony of one witness: the personnel security specialist.

## **II. EVIDENCE PRESENTED**

### **A. Documentary Evidence**

The LSO presented several exhibits regarding the Individual's financial status. Among the exhibits were documents pertaining to the Individual's prior bankruptcy filings. DOE Exs. 5, 10. The LSO also submitted a Personal Financial Statement, completed by the Individual in November 2006, in which the Individual listed his monthly income and debts. DOE Ex. 9. According to that statement, after satisfying monthly debts, the Individual had \$95.84 left over at the end of each month. *Id.* The LSO also submitted transcripts of the Individual's PSIs in August 1999 and December 2006, during which the Individual discussed his financial situation. DOE Exs. 8, 12.

The Individual also submitted various exhibits. The Individual presented a family budget that he developed and which he and his wife intend to implement to manage their day to day finances. *Indiv. Ex. A.* In that budget, after monthly expenses, the Individual and his wife expect to have \$396 left over each month. *Id.* He also submitted a list of monthly expenses for which he and his wife are responsible. *Indiv. Ex. B.* Those expenses include household bills, such as rent, utilities and groceries, various medical bills, payments on student and personal loans, and alimony to the Individual's first wife. *Id.* At my request, the Individual also presented at the hearing copies of recent household bills, including his telephone and internet bill, cable bill, electric bill, and cell phone bill. *Indiv. Exs. C, D, E, and F.* Each of the bills indicated a recent past due balance. *Id.* In addition, the Individual submitted an account statement from a personal loan he took out in July 2007 which shows regular payments from August through December 2007. *Indiv. Ex. G.* Finally, the Individual submitted a recent credit report. *Indiv. Ex. H.*

### **B. Hearing Testimony**

#### **1. The Individual**

The Individual testified regarding his prior bankruptcy filings and the current state of his finances. Regarding the 1999 Chapter 7 bankruptcy filing, the Individual stated that it was not his decision to make the filing. He stated that he and his first wife were in the process of getting a divorce and his wife intended to file for bankruptcy. Hearing Transcript ("Tr.") at 94. According to the Individual, his attorney advised him that if his wife filed for bankruptcy, he also had to file to avoid being held responsible for the entirety of their debts. Tr. at 95. After the

bankruptcy filing, the Individual realized that he and his first wife “were in financial difficulty for several years.” Tr. at 101. He also attributed part of their financial problems to his first wife’s desire to maintain a lifestyle similar to his then-wife’s sister and brother. *Id.* The Individual stated, “my wife felt that we should be able to do as good as they were. And we had several discussions about it, and I allowed us to be over-extended. In retrospect, I should not have, but that was the situation at the time.” Tr. at 101-102. The Individual further added that many of the debts he had incurred prior to the divorce and first bankruptcy filing were the result of his first wife’s extravagant purchases. Tr. at 104.

The Individual stated that, following his divorce and 1999 bankruptcy filing, he attempted to adjust his spending in order to better control his finances and “did not buy anything that was not absolutely essential.” Tr. at 99. He paid for most of his purchases in cash, but maintained a credit card in an effort to “rebuild [his] credit after the Chapter 7 bankruptcy to show a history of responsible credit.” Tr. at 106. He added that, at that time, he was “making ends meet” and was saving “a little bit” of money. Tr. at 109.

The Individual met his current wife in September 2000 and they began a long-distance relationship. *Id.* He funded trips they made to see each other with money he had in savings. *Id.* The Individual understood that when he and his wife decided to marry, he was agreeing to be jointly responsible for her debt as well as his. Tr. at 111. He stated that when they married, they knew they had to be careful with their money. They each planned to work and did not “foresee any issue with making ends meet or meeting the obligations that we were bringing to the table as a couple.” Tr. at 111-12.

The Individual discussed the 2002 Chapter 13 bankruptcy filing. He stated that shortly after their marriage in late 2000, he and his wife were “in some financial stress.” Tr. at 128. He attributed that stress to “the consolidation of the households, the fact that [his wife] was not able to find gainful employment in this area at that time, [and] some unexpected medical issues.” *Id.* During that time, his ex-wife claimed that he had not made his child support payments and his wages were garnished before he could prove that he had made the payments. Tr. at 129. He stated, “[the garnishment] could not have happened at a worse time, literally ... it caused a literal snowball.” *Id.* The Individual stated that even though he was eventually able to prove in court that he had made the child support payments, the erroneous garnishment of his wages was the catalyst for he and his current wife not being able to satisfy creditors and missing payments. He explained that the money that was garnished from his account was intended for the automatic payment of bills. Tr. at 130. The Individual also realized around the time of the Chapter 13 filing that his new wife’s spending habits were not what they should be and that they needed to get control of their finances. Tr. at 131-32. He and his wife “started talking about how [they] were going to get a handle on” their debt. Tr. at 131.

The Individual also discussed his current financial situation. He stated that he and his wife do not have credit cards. Tr. at 134. When necessary, they make purchases with their debit cards, which withdraw the funds directly from their checking account. *Id.* The exception, according to the Individual, was his wife’s purchase of a kiln on a line of credit. Tr. at 134. The remaining balance on that purchase is approximately \$600 and he anticipates paying it off within “the next couple of months.” Tr. at 137.

The Individual is also making regular payments on a personal loan he took in July 2007. Tr. at 141. He took the loan to make payments on, among other things, past due medical bills, to purchase a used vehicle, and to fix the other household vehicle. Tr. at 148. The Individual stated that he and his wife have been paying their household bills. Tr. at 150-52. He added that, other than a past due balance of \$34 on their electric bill, all of his household bills are current. *Id.* He intended to pay the past due amount “in the next couple of weeks.” Tr. at 150. The Individual stated that he does not have receipts for most of the payments because he and his wife pay most of the bills online, over the phone, or through automatic payments set up on their checking account. Tr. at 151-52. The Individual also discussed various other collection accounts which appear on his recent credit report. He testified that they were all satisfied and stated that he had documentation to that effect.<sup>3</sup> Tr. at 143-46.

The Individual stated that he and his wife regularly discuss their bills and budget, but he is primarily responsible for paying bills. Tr. at 135. He and his wife have little to no savings at this time. Tr. at 136. They are currently operating under the budget the Individual submitted which shows a net monthly surplus of \$396, after expenses. Tr. at 155; *see also* Indiv. Ex. A. He and his wife are saving when they can, but they have been using some of the surplus each month to help make payments on their debts. Tr. at 156. The Individual stated that “to the best of [his] knowledge” all of his outstanding bills, judgments and collection accounts have been satisfied. *Id.*

The Individual described his current financial situation as “promising.” Tr. at 157. He stated that he and his wife have “made a concerted effort, particularly in the past 15 months, to improve [their] communication, to improve [their] payment status with [their] creditors, with [their] monthly expenditures.” Tr. at 157. He believed that, within another six months, he and his wife would be able to consider purchasing a home and would be “in a better position to get a home loan.” *Id.* He stated that he and his wife want to purchase a home to improve their living conditions. Tr. at 158. He added that, given the current price of rentals for the type of home they need for their family, he and his wife would “be better off to purchase and develop some equity and better credit through a purchase [rather] than just renting.” Tr. at 159. According to the Individual, his current rent payment is \$400 a month; he and his wife are looking to purchase a house with a mortgage payment that is “roughly \$800 to \$900 a month, recognizing that [they] are going to have to make some other adjustments in [their] budgeting and [their] expenditures to meet that.” *Id.*

Finally, regarding his failure to report his Chapter 13 bankruptcy filing, the Individual stated that he “overlooked sending a message to DOE security in that regard. There was no malice or ill intent or attempt to hid that fact from everyone.” Tr. at 107. The Individual further explained that he did report the bankruptcy filing to his contractor personnel security office and made arrangements with the contractor payroll department. *Id.* He admitted that his failure to report the filing to DOE was a product of his failure to review the correct notification procedure. *Id.*

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<sup>3</sup> I agreed to hold the record open for a period of two weeks after the hearing and asked the Individual at the hearing to submit copies of the documentation he referred to regarding his satisfaction of these debts. *See* Tr. at 185. I did not receive any post-hearing submissions from the Individual.

## 2. The Individual's Wife

The Individual's wife stated that, in her opinion, the Individual was not subject to blackmail or coercion over their current financial status. Tr. at 8-9. She also believed that the Individual's failure to report their Chapter 13 bankruptcy filing was unintentional. She stated, "I think it was just an oversight on [his] part, not malicious or secretive." Tr. at 9.

The Individual's wife stated that when she and the Individual married, she brought a significant amount of debt to the marriage, primarily in the form of outstanding student loans. Tr. at 11. She stated that the cumulative balance remaining on the student loans is "probably around \$50,000." *Id.* She stated that she took out those loans between 1990 and 1992. *Id.* She stated that prior to her marriage, when she lived in another state, she made a decent income. However, she has been unable to find a suitable position in her field and, therefore, had to put her loans in deferment and forbearance. Tr. at 12-14. The Individual's wife stated that she and the Individual discussed their separate financial difficulties prior to their marriage. Tr. at 14. She stated that her goal when they got married was to obtain employment in her field but, given their location, it was difficult to find a position. Tr. at 15. However, she stated that a company recently opened in their area and she is hopeful of obtaining a position. *Id.*

Regarding their filing of the Chapter 13 bankruptcy, the Individual's wife disputed the statement in the notification letter that the filing was due overspending. Tr. at 31. She stated,

We had to file that bankruptcy ... because of [the Individual's] ex-wife and all the court costs that we had to incur with her post-divorce. She had told the State ... that [the Individual] owed back child support, which he proved that he didn't ... Before he even had [a] chance to prove that he had made those payments, [the state had] already garnished his wages, which [were] a direct deposit [into his bank account]. So anything we had coming [as an] automatic payment out of the bank was returned, and we had this huge snowball effect.

*Id.* The Individual's wife further explained that the Individual's ex-wife would not let the Individual reduce his support payments as his children turned 18 years old and, therefore, she and the Individual had to go to court, incurring attorney and court fees, every time a change needed to be made to the child support agreement. Tr. at 32. She added, "we have never been credit card users to a big degree. When I married [the Individual], he had a nice bank balance, a nice cushion of \$3,000 or so. He had a credit card with an available balance, quite a large available balance ... [Then] we always had to go to court for every single thing. It just grew and mounted." *Id.*

The Individual's wife stated that she and the Individual make most of their purchases together and, therefore, are aware of each other's expenditures. Tr. at 20. The exception was when she purchased a kiln for her home business. *Id.* She stated, "I was kind of surprised myself that I did that. But it was something we were looking into and talking about." *Id.* Although they had some income from her home business around the holidays, that has since tapered off and the Individual's salary was the family's main source of income. Tr. at 29. She added that, since their marriage, the Individual has been primarily responsible for the family's budget and making

financial decisions. Tr. at 25. She the Individual pay all of their bills either by debit card or money order; they do not use checks and do not have credit cards. Tr. at 28.

The Individual's wife also discussed their household bills. She stated that the cable bill and telephone and internet bill were paid in full. Tr. at 30. She added that they made a payment on the electric bill, but did not pay it in full so a portion of the balance carried over to the next month. *Id.* She also added that she and the Individual do not make a lot of unnecessary purchases. She stated,

We don't have a lot of frivolous toys. We don't drive expensive cars ... we don't do a lot of spending on things like that. Most of our spending is health-related because of having children or whatever ... we're not the type of people that are just out, you know, partying, going on cruises, vacationing, traveling. We don't do that.

Tr. at 44. The Individual's wife stated that she and the Individual have made "a big push" to pay their bills paid off because they are working to improve their credit rating in the hopes of purchasing a home. Tr. at 33. Finally, the Individual's wife stated that filing for bankruptcy is not an option she and the Individual would choose again in the future "because we don't live with credit cards and because we've learned." Tr. at 44. She added that they do not have the same kinds of expenses, such as attorney's fees, that precipitated the filing of the Chapter 13 bankruptcy and did not envision incurring such expenses in the future. Tr. at 44-45.

### **3. The Personnel Security Specialist**

After sitting in on the hearing and listening to all of the testimony, the personnel security specialist testified. She stated that she interviewed the Individual after his 1999 Chapter 7 bankruptcy filing. She stated that he admitted that he had not been handling his finances responsibly and then his divorce created expenses that "set him over the edge" and necessitated the bankruptcy filing. Tr. at 167. She stated that the Individual indicated that, after the 1999 bankruptcy filing, the Individual felt he could live on his income and that he "would be able to live within his means in the future." Tr. at 169. The personnel security specialist stated that the LSO learned of the 2002 bankruptcy during a routine re-investigation of the Individual's clearance in 2006 and she interviewed the Individual again. Tr. at 170. During that interview, the Individual "admitted that he didn't really know where his money was going, [he] had a hard time tracking it." Tr. at 172. The personnel security specialist stated that, at the time of the interview, despite the Individual's two prior bankruptcy filings, his finances were in "a state of disarray." Tr. at 173.

The personnel security specialist felt that, as of the hearing, the Individual had not resolved the concerns associated with his financial status. Tr. at 175. She stated that, although some bills had recently been paid off, the recency of past due balances on recent household obligations "indicate that still the family is living beyond their means without the ability to pay." Tr. at 176. The personnel security specialist indicated that, in her opinion, a significant pattern of financial responsibility, including on-time payments on monthly bills and an absence of judgments or

collections, was necessary to mitigate concerns raised by lengthy pattern of financial irresponsibility. Tr. at 178-179.

#### **4. The Individual's Supervisor**

The Individual's supervisor has known him for six years. Tr. at 58. He stated that the Individual's job performance was "satisfactory." Tr. at 61. He stated that he was aware that the Individual had some financial difficulties because the Individual brought it to his attention. Tr. at 64. He added that he did not believe that the Individual tried to hide his financial difficulties. He also stated, "there has been no indication of any issues based upon [the Individual's] integrity or his ability to do his job in a secure manner." Tr. at 61-62. The Individual's supervisor described the Individual as reliable. Tr. at 66.

#### **5. The Individual's Co-Worker**

The Individual's co-worker has known the Individual for approximately 15 years. Tr. at 68. The Individual's co-worker was aware of the Individual's bankruptcy filing and stated that he and the Individual had discussed the Individual's finances in the past. Tr. at 69. The Individual's co-worker stated that, regardless of the Individual's financial situation, he did not believe there was anything that would "entice [the Individual] to use any sensitive information for financial gains." Tr. at 69. He stated that the Individual was "trying to slowly work himself out of the [financial] mess [he] got into and that he and his wife were taking a closer look on their finances and "jointly agreeing" on purchases. Tr. at 77.

#### **6. The Individual's Church Friend**

The Individual's friend first came to know the Individual when he was the bishop in the Individual's church and has known the Individual and his wife for "several years." Tr. at 47. He stated that, in his opinion, the Individual's integrity was "above reproach." Tr. at 52. The Individual's friend stated that the Individual is reliable and freely volunteers his time for the church. Tr. at 56-57.

### **III. STANDARD OF REVIEW**

The regulations governing the Individual's eligibility for an access authorization are set forth are 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." An individual is eligible for access authorization if such authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id.* See generally *Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security" test indicates that "security clearance determinations should err, if they must, on the side of denials").

Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization

eligibility.” 10 C.F.R. § 710.10(a). Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(a).

#### IV. ANALYSIS

##### A. The Security Concerns

The derogatory information concerning Criterion L centers on the Individual’s financial problems. Criterion L concerns conduct tending to show that the Individual was “not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.” 10 C.F.R. § 710.8(l). Criterion L specifies that a “pattern of financial irresponsibility” is among the conduct which raises such concerns. *Id.*

Bankruptcy is a legal means of resolving financial problems and becoming free of debt. A bankruptcy filing, *per se*, does not automatically raise security concerns. However, bankruptcy raises security concerns to the extent that it illustrates a pattern of financial irresponsibility or difficulty. A pattern of financial irresponsibility may indicate that an individual is not honest, reliable or trustworthy and could make an individual susceptible to blackmail or coercion. *See, e.g., Personnel Security Hearing, Case No. TSO-0026*, 28 DOE ¶ 82,925 (2003); *Personnel Security Hearing, Case No. VSO-0520*, 28 DOE ¶ 82,862 (2002); *Personnel Security Hearing, Case No. VSO-0288*, 27 DOE ¶ 82,826 (1999); *Personnel Security Hearing, Case No. VSO-0081*, 25 DOE ¶ 82,805 (1996).

In this case, the Individual’s two bankruptcy filings within a three-year span appear to have been necessitated by both legitimate financial hardship and irresponsible financial behavior. While the Individual attributed the 1999 bankruptcy filing primarily to his divorce, he admitted that he and his first wife were in financial difficulty prior to their divorce due to a home purchase that, in retrospect, the Individual believed they should not have made. Regarding the 2002 bankruptcy filing, the erroneous garnishment of his wages appears to have been what set the Individual over the financial edge and caused him to become late on several payments. However, the fact remains that, whether due to a lack of communication between the Individual and current wife or simply a lack of regard for their financial situation, prior to the garnishment, their finances were already stretched to the point where the garnishment caused them to miss other payments and not



be able to repay other outstanding debts. Given this information, the local security office had more than sufficient grounds to invoke Criterion L.

## **B. Mitigating Factors**

The Individual has made some attempts to resolve his financial difficulties and describes his current financial outlook as “promising.” The issues with his ex-wife are resolved and the Individual is no longer incurring the type of legal or court costs which were present during the two bankruptcies. He and his wife are clearly paying closer attention to their finances, are communicating about their income and expenditures, and are now operating within a set budget. In addition, both the Individual and his wife testified that their monthly household bills are current and they have paid off several old debts. The Individual did not submit any documentation to support that claim; but, if true, it is certainly an indicator of the Individual’s progress in resolving his financial difficulties. In addition, both the Individual’s supervisor and co-worker stated that the Individual has not tried to hide his financial difficulties. The co-worker further added that he knows the Individual and his wife are actively working to control their financial situation.

However, despite the fact that each bankruptcy involved some factors beyond the Individual’s control, the Individual admitted that he engaged in some irresponsible financial behavior. Specifically, during his first marriage, the Individual allowed himself to become financially over-extended due to his first wife’s purchases. He does not appear to have taken any action during his first marriage to have controlled his household spending. Similar factors were present prior to the second bankruptcy. The Individual and his current wife were not communicating about their finances, despite their knowledge of their debts and their prior experience with financial difficulties.

Once a pattern of financial irresponsibility has been established, it is an individual’s burden to demonstrate a new pattern of financial responsibility in order to mitigate or resolve the security concerns raised by the established pattern of responsibility. *Personnel Security Hearing (Case No. TSO-0170)*, 29 DOE & 82,811 (2006); *Personnel Security Hearing (Case No. VSO-0108)*, 26 DOE & 82,764 at 85,699 (1996). In this case, there have been some recent positive steps taken by the Individual and his wife to get control of their finances and pay off old debts. However, these steps are relatively recent. After fulfilling their obligations under their Chapter 13 plan, the Individual and his wife’s debts were discharged in October 2005. *See* DOE Ex. 10. However, by their testimony, the Individual and his wife paid off most of their old debts from July 2007 to December 2007, after the Individual took out a personal loan. In addition, the recent household bills submitted by the Individual indicated past due balances which, with the exception of the past due amount on the electric bill, he had only recently paid. While I do believe that the Individual is making progress in resolving his financial problems, I am not convinced that the Individual’s financial position is stable at this time. Therefore, I am unable to conclude that there is a sufficiently long pattern of financial responsibility to mitigate the security concerns in this case.

## **V. CONCLUSION**

Upon consideration of the record in this case, I find that there was ample evidence that raised a doubt regarding the Individual's eligibility for a security clearance under Criterion L. However, despite the recent positive steps taken by the Individual to address his financial problems, I am unable to find at this time that the Individual has resolved the concerns raised by his past bankruptcy filings and his general financial situation. Therefore, I cannot conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I conclude that the Individual's access authorization should not be restored at this time.

Diane DeMoura  
Hearing Officer  
Office of Hearings and Appeals

Date: April 8, 2008